

FILED IN THE U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 21 2024

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SPOKANE, WASHINGTON

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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12

13 UNITED STATES OF AMERICA,
14

15 Plaintiff,
16

Case No.: 2:24-CR-00040-TOR

17 v.
18

PLEA AGREEMENT

19 JESSICA ANN MARSHALL,
20

21 Defendant.
22

23 Plaintiff, United States of America, by and through Vanessa R. Waldref, United
24 States Attorney for the Eastern District of Washington, and Dan Fruchter, Assistant
25 United States Attorney, and Defendant, JESSICA ANN MARSHALL (“Defendant”)
26 and the Defendant’s counsel, Ryan Farrell, agree to the following Plea Agreement:
27

28 1. Waiver of Indictment:

Defendant, having been advised of the right to be charged by Indictment, agrees
to waive that right and enter a plea of guilty to the charges brought by the United
States in an Information.

2. Guilty Plea and Maximum Statutory Penalties:

Defendant agrees to plead guilty to the Information filed in the Eastern District
of Washington, charging the Defendant with one count of Theft and Embezzlement by

1 Bank Employee, in violation of 18 U.S.C. § 656. Defendant understands that
2 violation of 18 U.S.C. § 656 is a Class B Felony that carries the following penalties:

- 3 (a) not more than thirty years imprisonment;
- 4 (b) not more than a five-year term of supervised release;
- 5 (c) a fine not to exceed \$1,000,000;
- 6 (d) restitution; and
- 7 (e) a \$100 special penalty assessment.

8 3. Supervised Release

9 Defendant understands if Defendant violates any condition of Defendant's
10 supervised release, the Court may revoke Defendant's term of supervised release, and
11 require Defendant to serve in prison all or part of the term of supervised release
12 authorized by statute for the offense that resulted in such term of supervised release
13 without credit for time previously served on post-release supervision, up to three years
14 in prison because the offense is a Class B felony.

15 4. The Court is Not a Party to the Agreement

16 The Court is not a party to this Plea Agreement and may accept or reject it.
17 Defendant acknowledges that no promises of any type have been made to Defendant
18 with respect to the sentence the Court will impose in this matter.

19 Defendant understands the following:

- 20 a. sentencing is a matter solely within the discretion of the Court;
- 21 b. the Court is under no obligation to accept any recommendations made by
22 the United States or Defendant;
- 23 c. the Court will obtain an independent report and sentencing
24 recommendation from the United States Probation Office;
- 25 d. the Court may exercise its discretion to impose any sentence it deems
26 appropriate, up to the statutory maximum penalties;
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- e. the Court is required to consider the applicable range set forth in the United States Sentencing Guidelines, but may depart upward or downward under certain circumstances; and
- f. the Court may reject recommendations made by the United States or Defendant, and that will not be a basis for Defendant to withdraw from this Plea Agreement or Defendant's guilty plea.

5. Potential Immigration Consequences of Guilty Plea

If Defendant is not a citizen of the United States, Defendant understands the following:

- a. pleading guilty in this case may have immigration consequences;
- b. a broad range of federal crimes may result in Defendant's removal from the United States, including the offense to which Defendant is pleading guilty;
- c. removal from the United States and other immigration consequences are the subject of separate proceedings; and
- d. no one, including Defendant's attorney or the Court, can predict with absolute certainty the effect of a federal conviction on Defendant's immigration status.

Defendant affirms that Defendant is knowingly, intelligently, and voluntarily pleading guilty as set forth in this Plea Agreement, regardless of any immigration consequences that Defendant's guilty plea may entail.

6. Waiver of Constitutional Rights

Defendant understands that, by entering these pleas of guilty, Defendant is knowingly and voluntarily waiving certain constitutional rights, including:

- a) the right to a jury trial;
- b) the right to see, hear and question the witnesses;
- c) the right to remain silent at trial;
- d) the right to testify at trial; and

1 e) the right to compel witnesses to testify.

2 While Defendant is waiving certain constitutional rights, Defendant understands
3 he retains the right to be assisted through the sentencing and any direct appeal of the
4 conviction and sentence by an attorney who will be appointed at no cost if Defendant
5 cannot afford to hire an attorney. Defendant understands and agrees that any defense
6 motions currently pending before the Court are mooted by this Plea Agreement, and
7 Defendant expressly waives Defendant's right to bring any additional pretrial motions.

8 **7. Elements of the Offense**

9 The United States and Defendant agree that in order to convict Defendant of
10 Theft and Embezzlement by Bank Employee, in violation of 18 U.S.C. § 656, the
11 United States would have to prove beyond a reasonable doubt the following elements:

12 First: That, between June 5, 2023 and September 19, 2023, in the Eastern
13 District of Washington, Defendant JESSICA ANN MARSHALL
was an employee of Bank of Idaho;

14 Second: That Bank of Idaho was a bank whose deposits are insured by the
15 Federal Deposit Insurance Corporation;

16 Third: That Defendant JESSICA ANN MARSHALL embezzled or willfully
17 misapplied moneys, funds, and assets belonging to or entrusted to the
18 custody and care of Bank of Idaho;

19 Fourth: That Defendant JESSICA ANN MARSHALL did so with the intent to
20 defraud the bank; and

21 Fifth: That the amount embezzled or misapplied was more than \$1,000.00.

22 **8. Factual Basis and Statement of Facts**

23 The United States and Defendant stipulate and agree that the following facts are
24 accurate; that the United States could prove these facts beyond a reasonable doubt at
25 trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.
26 This statement of facts does not preclude either party from presenting and arguing, for
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1 sentencing purposes, additional facts that are relevant to the guideline computation or
2 sentencing, unless otherwise prohibited in this agreement.

3 Between June 5, 2023 and September 19, 2023, Defendant JESSICA ANN
4 MARSHALL was employed by the Bank of Idaho as the Branch Manager of Bank of
5 Idaho's downtown Spokane, Washington branch located at 818 W Riverside Avenue,
6 Suite 120, Spokane, Washington 99201, in the Eastern District of Washington. As
7 Branch Manager, between June 5, 2023 and September 19, 2023, Defendant had
8 access to keys to the bank vault and the ATM for the branch, as well as access to the
9 branch's electronic systems and accounts. Bank of Idaho is an Idaho state charter
10 bank whose deposits are insured by the Federal Deposit Insurance Commission
11 (FDIC).

12 Between June 5, 2023 and September 19, 2023, Defendant JESSICA ANN
13 MARSHALL used her position as Branch Manager to embezzle and willfully
14 misapply funds belonging to and entrusted to the care and custody of Bank of Idaho.
15 Defendant took cash from the bank vault and ATM, as well as smaller amounts from
16 her cash drawer. Defendant then falsified documentation, including count sheets to
17 reconcile the cash, in order to hide her theft and embezzlement, and directed bank
18 employees to sign the falsified count sheets. Defendant also used her position as
19 Branch Manager to make fraudulent deposit transactions into her spouse's account.
20 These fraudulent transactions reflected that money was being deposited into the
21 account; however, in reality no funds were deposited. When Bank of Idaho inquired
22 into these transactions, Defendant accessed the computer of a co-worker and sent an
23 email with false information that appeared to be from a co-worker, in an attempt to
24 conceal her conduct. Defendant also accessed the computer of another co-worker to
25 delete an email from Bank of Idaho inquiring about these transactions, in a further
26 attempt to conceal her conduct.

27 Between June 2023 and September 2023, Defendant stole and embezzled at
28 least \$345,664.66 in the manner described above.

1 Defendant admits that between June 5, 2023 and September 19, 2023, while
2 employed as a Branch Manager in the Eastern District of Washington by Bank of
3 Idaho, an FDIC-insured bank, she willfully stole, embezzled, and misapplied at least
4 \$345,664.66 belonging to and in the care and custody of Bank of Idaho, and that she
5 did so with the intent to defraud Bank of Idaho.

6 9. The United States Agrees

7 The United States Attorney's Office for the Eastern District of Washington
8 agrees not to bring any additional charges against Defendant based upon information
9 in its possession at the time of this Plea Agreement and arising out of Defendant's
10 conduct involving illegal activity charged in the Information pending in the Eastern
11 District of Washington, unless Defendant breaches this Plea Agreement before
12 sentencing and/or withdraws in any way from this Plea Agreement.

13 10. United States Sentencing Guideline Calculations

14 Defendant understands and acknowledges that the United States Sentencing
15 Guidelines (hereinafter USSG) are applicable to this case, and that the Court will
16 determine Defendant's applicable, advisory sentencing guideline range at sentencing.
17 The United States and the Defendant acknowledge that the Court is not bound by the
18 parties' recommendation concerning the base offense level or the recommended
19 guideline adjustments.

20 (a) Base Offense Level and Guideline Adjustments:

21 The United States and Defendant agree and stipulate that the base offense level
22 for violation of 18 U.S.C. § 656 is 7. U.S.S.G. §2B1.1(a)(1).

23 The United States and Defendant further agree that this amount should be
24 increased by 12 levels because the amount of loss exceeded \$250,000, pursuant to
25 U.S.S.G. § 2B1.1(b)(1)(G).

26 The United States contends that this amount should be increased by an
27 additional 2 levels because Defendant abused a position of trust to facilitate
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1 commission of the offense. U.S.S.G. § 3B1.3. Defendant reserves her right to oppose
2 the application of this enhancement.

3 Other than a possible 2-level reduction for Defendant being a zero-point
4 offender, which is discussed below, the parties are not aware of any other
5 enhancement or adjustments that apply; however, the United States and Defendant
6 reserve their rights to each argue for or against any other adjustments and/or
7 enhancements under the USSG noted in the Presentence Investigation Report.

8 (b) Acceptance of Responsibility:

9 The United States will recommend that Defendant receive a three-level
10 downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a-
11 b), if Defendant does the following:

- 12 i. accepts this Plea Agreement;
- 13 ii. enters a plea of guilty to the Information on or before March 31, 2024;
- 14 iii. demonstrates recognition and affirmative acceptance of Defendant's
15 personal responsibility for Defendant's criminal conduct;
- 16 iv. provides complete and accurate information during the sentencing
17 process; and
- 18 v. does not commit any obstructive conduct.

19 The United States and Defendant agree that at its option and on written notice
20 to Defendant, the United States may elect not to recommend a reduction for
21 acceptance of responsibility if, prior to the imposition of sentence, Defendant is
22 charged with, or convicted of, any criminal offense, or if Defendant tests positive for
23 any controlled substance.

24 (c) Criminal History

25 The Parties make no agreement on Defendant's criminal history category,
26 which shall be determined by the Court after the Presentence Investigation Report is
27 completed. However, to the extent that the Court determines that the Defendant has
28

1 no criminal history points, the Parties agree that Defendant would qualify for an
2 additional 2-point reduction in total offense level. U.S.S.G. § 4C1.1.

3 11. Departure

4 Defendant is free to move for a departure and/or variance under the USSG
5 and/or 18 U.S.C. § 3553. The United States reserves the right to oppose any such
6 departure or variance.

7 12. Incarceration

8 The United States agrees to recommend a sentence of incarceration at or below
9 the low end of the advisory guideline range as determined by the Court. Defendant
10 may recommend any legal sentence.

11 13. Criminal Fine

12 The United States agrees to recommend no additional criminal fine in this
13 matter.

14 14. Mandatory Special Penalty Assessment

15 Defendant agrees to pay the \$100 special penalty assessment to the Clerk of
16 Court for the Eastern District of Washington. *See* 18 U.S.C. § 3013.

17 15. Restitution

18 The parties agree restitution is required pursuant to 18 U.S.C. §§ 3663(a),
19 3663A, and 3664. Further, pursuant to 18 U.S.C. § 3663(a)(3), the Defendant
20 voluntarily agrees to pay the agreed upon restitution amount in exchange for the
21 United States not bringing additional potential charges, regardless of whether counts
22 of the Indictment dealing with such losses will be dismissed as part of this Plea
23 Agreement. With respect to restitution, the parties agree to the following:

24 (a) Restitution Amount and Interest:

25 The parties agree that the Court should order Defendant to pay restitution in the
26 amount of \$345,664.66 to Bank of Idaho. This amount represents Bank of Idaho's
27 loss as a result of Defendant's conduct. The parties agree that Defendant's payment
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1 of \$345,664.66 will fully satisfy her restitution obligation. The interest on this
2 restitution amount should be waived.

3 (b) Payments

4 The parties agree the Court will set a restitution payment schedule based on
5 Defendant's financial circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). That being
6 said, Defendant agrees to pay not less than 10% of Defendant's net future monthly
7 income toward her restitution obligation.

8 (c) Treasury Offset Program and Collection

9 Defendant understands the Treasury Offset Program (TOP) collects delinquent
10 debts owed to federal agencies. If applicable, the TOP may take part or all of
11 Defendant's federal tax refund, federal retirement benefits, or other federal benefits
12 and apply these monies to Defendant's restitution obligations. *See* 26 U.S.C. §
13 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

14 Defendant also understands the United States may, notwithstanding the Court-
15 imposed payment schedule, pursue other avenues to ensure the restitution obligation is
16 satisfied, including, but not limited to, garnishment of available funds, wages, or
17 assets. *See* 18 U.S.C. §§ 3572, 3613, and 3664(m). Nothing in this acknowledgment
18 shall be construed to limit Defendant's ability to assert any specifically identified
19 exemptions as provided by law, except as set forth in this Plea Agreement.

20 (d) Obligations, Authorizations, and Notifications

21 The Defendant agrees to truthfully complete the Financial Disclosure Statement
22 that will be provided by the earlier of 30 days from the Defendant's signature on this
23 plea agreement or the date of the Defendant's entry of a guilty plea, sign it under
24 penalty of perjury and provide it to both the United States Attorney's Office and the
25 United States Probation Office. The parties agree that Defendant's failure to timely
26 and accurately complete and sign the Financial Disclosure Statement, and any update
27 thereto, may, in addition to any other penalty or remedy, constitute Defendant's
28 failure to accept responsibility under U.S.S.G §3E1.1.

1 The Defendant expressly authorizes the United States Attorney's Office to
2 obtain a credit report on Defendant upon the signing of this Plea Agreement. Until any
3 fine or restitution order is paid in full, Defendant agrees to provide waivers, consents
4 or releases requested by the United States Attorney's Office to access records to verify
5 the financial information.

6 Until the restitution order is paid in full, Defendant agrees to notify the
7 Financial Litigation Unit of the United States Attorney's Office before Defendant
8 transfers any interest in property with a value exceeding \$1,000 owned directly or
9 indirectly, individually or jointly, by Defendant, including any interest held or owned
10 under any name, including trusts, partnerships and corporations. Further, until the
11 restitution order is paid in full, pursuant to 18 U.S.C. § 3664(k), Defendant shall
12 notify the court and the United States Attorney's Office within a reasonable period of
13 time, but no later than 10 days, of any material change in Defendant's economic
14 circumstances that might affect defendant's ability to pay restitution, including, but
15 not limited to, new or changed employment, increases in income, inheritances,
16 monetary gifts or any other acquisition of assets or money.

17 Until the any fine or restitution order is paid in full, the Defendant agrees to
18 disclose all assets in which the Defendant has any interest or over which Defendant
19 exercises control, directly or indirectly, including those held by a spouse, nominee or
20 third party.

21 Pursuant to 18 U.S.C. § 3612(b)(1)(F) the Defendant understands and agrees
22 that until a fine or restitution order is paid in full, the Defendant must notify the
23 United States Attorney's Office of any change in the mailing address or residence
24 address within 30 days of the change.

25 **16. Forfeiture**

26 The parties agree forfeiture applies. *See* 18 U.S.C. § 982(a)(2)(A); 28 U.S.C.
27 § 2461(c). With respect to forfeiture, the parties agree to the following:
28

1 (a) Forfeitable Property

2 The United States shall seek a forfeiture money judgment in this matter and will
3 not seek to forfeit specific property, except as set forth in this Plea Agreement or
4 authorized by law. The United States will not seek to forfeit proceeds in an amount
5 exceeding what Defendant actually obtained as a result of the crime. *See Honeycutt v.*
6 *U.S.*, 137 S. Ct. 1626 (2017).

7 (b) Money Judgment

8 Defendant agrees to forfeit to the United States all right, title, and interest in the
9 following property: a \$345,664.66 money judgment, which represents the amount of
10 proceeds Defendant obtained as a result of her illegal conduct.

11 (c) Substitute Property

12 Defendant understands the United States may seek for Defendant to forfeit
13 substitute property in satisfaction of the money judgment if the United States can
14 establish the following regarding the above-described property (*i.e.*, the money
15 judgment): a) it cannot be located upon the exercise of due diligence; b) it has been
16 transferred or sold to, or deposited with, a third party; c) it has been placed beyond the
17 Court's jurisdiction; d) it has substantially diminished in value; e) it has been
18 commingled with other property and cannot be divided without difficulty. *See* 18
19 U.S.C. § 982(b)(1); 21 U.S.C. § 853(p).

20 (d) Application of Forfeited Property to Restitution

21 Defendant understands the United States will seek restitution for the victim(s)
22 in this case independent of this money judgment. It is the parties' mutual
23 understanding that the United States Attorney's Office will seek approval to apply the
24 proceeds of any forfeited assets to Defendant's restitution obligations. Defendant
25 recognizes the final decision to approve this application rests with the Attorney
26 General. *See* 18 U.S.C. § 981(d), (e); *see also* 28 C.F.R. 9 *et. seq.*

1 (e) Cooperation on Forfeited Assets

2 Defendant agrees to cooperate with the United States in passing clear title on all
3 forfeited assets. Defendant also agrees to assist the United States in locating any
4 assets that 1) are the proceeds of illegal conduct (as outlined in this Plea Agreement)
5 and 2) have not been dissipated. If such assets are located, then Defendant will
6 stipulate to their forfeiture.

7 (f) Waivers

8 Defendant agrees to waive oral pronouncement of forfeiture at the time of
9 sentencing. *See* Fed. R. Crim. P. 32.2(b)(4)(B).

10 Defendant stipulates and agrees to waive all constitutional and statutory
11 challenges in any manner (including direct appeal, habeas corpus, or any other means)
12 to any forfeiture carried out in accordance with the Plea Agreement on any grounds,
13 including a claim that forfeiture in this case constitutes an excessive fine or punishment.

14 Defendant stipulates and agrees to hold the United States, and its agents and
15 employees, harmless from any and all claims whatsoever in connection with the
16 investigation, the prosecution of charges, and the seizure and forfeiture of property
17 covered by this Plea Agreement.

18 17. Stipulation and Consent

19 Defendant agrees that she will execute a Stipulation and Consent to the Issuance
20 of an Order of Prohibition From Further Participation and consent to the entry of an
21 Order of Prohibition From Further Participation ("Order") against her by the: Federal
22 Deposit Insurance Corporation. Defendant acknowledges that the Order will prohibit
23 her from participating in the conduct of the affairs of any insured financial institution
24 pursuant to section 8(e) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(e) and
25 the terms of the Order.

26 18. Payments While Incarcerated

27 If Defendant lacks the financial resources to pay the monetary obligations
28 imposed by the Court, then Defendant agrees to earn the money to pay toward those

1 obligations by participating in Bureau of Prisons' Inmate Financial Responsibility
2 Program.

3 19. Supervised Release

4 The parties agree to request a term of supervised release of 3 years following
5 any term of imprisonment imposed by the Court, with all standard conditions of
6 supervision. The United States is also free to recommend any additional special
7 conditions of supervision at the time of sentencing and during the period of supervised
8 release that it deems appropriate, and Defendant is free to oppose any additional
9 special conditions of supervision at the time of sentencing.

10 20. Additional Violations of Law Can Void Plea Agreement

11 Defendant and the United States agree that the United States may, at its option
12 and upon written notice to Defendant, withdraw from this Plea Agreement or modify
13 its recommendation for sentence if, before sentence is imposed, Defendant is charged
14 or convicted of any criminal offense whatsoever, or if Defendant tests positive for any
15 controlled substance.

16 21. Waiver of Appeal

17 In return for the concessions that the United States has made in this Plea
18 Agreement, Defendant agrees to waive Defendant's right to appeal Defendant's
19 conviction and sentence.

20 Defendant expressly waives Defendant's right to appeal any fine, term of
21 supervised release, or restitution order imposed by the Court.

22 Defendant expressly waives the right to file any post-conviction motion
23 attacking Defendant's conviction and sentence, including a motion pursuant to 28
24 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from
25 information not now known by Defendant and which, in the exercise of due diligence,
26 Defendant could not know by the time the Court imposes sentence.

27 Nothing in this Plea Agreement shall preclude the United States from opposing
28 any post-conviction motion for a reduction of sentence or other attack upon the

1 conviction or sentence, including, but not limited to, writ of habeas corpus
2 proceedings brought pursuant to 28 U.S.C. § 2255.

3 22. Withdrawal or Vacatur of Defendant's Plea

4 Should Defendant successfully move to withdraw from this Plea Agreement or
5 should Defendant's conviction be set aside, vacated, reversed, or dismissed under any
6 circumstance, then:

- 7 a. this Plea Agreement shall become null and void;
- 8 b. the United States may prosecute Defendant on all available
9 charges;
- 10 c. The United States may reinstate any counts that have been
11 dismissed, have been superseded by the filing of another charging
12 instrument, or were not charged because of this Plea Agreement;
13 and
- 14 d. the United States may file any new charges that would otherwise
15 be barred by this Plea Agreement.

16 The decision to pursue any or all of these options is solely in the discretion of
17 the United States Attorney's Office.

18 Defendant agrees to waive any objections, motions, and/or defenses Defendant
19 might have to the United States' decisions to seek, reinstate, or reinitiate charges if a
20 count of conviction is withdrawn, set aside, vacated, reversed, or dismissed, including
21 any claim that the United States has violated Double Jeopardy.

22 Defendant agrees not to raise any objections based on the passage of time,
23 including but not limited to, alleged violations of any statutes of limitation or any
24 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
25 Amendment.

26 23. Integration Clause:
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1 The parties acknowledge that this document constitutes the entire Plea
2 Agreement between the parties, and no other promises, agreements, or conditions exist
3 between the parties concerning this case's resolution. This Plea Agreement is binding
4 only upon the United States Attorney's Office for the Eastern District of Washington,
5 and cannot bind other federal, state, or local authorities. The parties agree that this
6 agreement cannot be modified except in writing that is signed by the United States and
7 Defendant.

Approval and Signature

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

Vanessa R. Waldref
United States Attorney



Dan Fruchter
Assistant United States Attorney

3/21/2024
Date

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreements with my attorney. I understand and voluntarily enter into the Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promise or inducements have been made to me, other than those contained in this Plea Agreement and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.



JESSICA ANN MARSHALL
Defendant

3/21/2024
Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court should not accept Defendant's plea of guilty.



Ryan Farrell
Attorney for Defendant

3/21/2024
Date